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LON/00AE/LSC/2007/0306

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD AND TENANT ACT 1985: SECTION 27A, AS AMENDED

Address:	10 Station Road, London, NW10 4UE
Applicant:	Barriedale Properties Ltd
Respondents:	(1) Victoria Bannerman (2) Adimola Ogaundimu (3) Samantha Proctor & Gemma Smith-Edhouse
Application:	20 July 2007
Inspection:	N/A
Hearing:	5 November 2007

Appearances:

Landlord

Mr Patel Mr T M Taylor	Managing Agent	For the Applicant

Tenants

(1) Mr Ogaundimu	Leaseholder	
(2) Miss Proctor	Leaseholder	For the Respondents

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Mr M Cairns MCIEH
Mr D J Wills ACIB

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AE/LSC/2007/0306

IN THE MATTER OF 10 STATION ROAD, LONDON, NW10 4UE

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

BETWEEN:

BARRIEDALE PROPERTIES LIMITED

Applicant

-and-

(1) VICTORIA BANNERMAN
(2) ADEMOLA OGUNDIMU
(3) SAMANTHA LOUISE PROCTOR & CHRISTIANNE SMITH-EDHOUSE

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This application is made by the Applicant pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the reasonableness of the buildings insurance premiums paid for each of the service charge years from 2005/06 to 2007/08. The Applicant also sought a determination in relation to the unpaid ground rent. However, at the pre-trial review hearing on 15 August 2007, the Tribunal on that occasion ruled that it did not have jurisdiction to make such a determination because ground rent was not a "service charge" within the meaning of s.18 of the Act.

2. The Applicant is the freeholder of the subject property, which is an end of terrace house converted in 2003 into three flats. The Respondents are,

respectively, the lessees of the ground, first and second floor flats, with each held on a long lease granted for a term of 99 years ("the leases").

3. The Respondents liability to pay a service charge contribution under the leases arises in the same way. The liability to pay the service charge contribution and the extent of that liability under each of the leases in not in issue. It is also not in issue that the buildings insurance premiums are recoverable as relevant service charge expenditure. It is, therefore, not necessary to set out the relevant service charge provisions in the leases, save to say that each of the Respondents liability to pay a service charge contribution is 33.33% of the total service charge expenditure incurred by the Applicant. The service charge year operated by the Applicant appears to commence on 24 June of each year and ending on 23 June of the following year.

4. The buildings insurance premiums in issue are:

2004/05	£720.70 plus a brokerage fee of £40
2005/06	£777.57 plus a brokerage fee of £10
2007/08	819.56 plus a brokerage fee of £15 plus £15 administration fee for deferred payment by the Applicant.

At the hearing, the Applicant conceded that it was no longer seeking to recover from the Respondents either the brokerage fee claimed for each of the service charge years or the £15 administration fee claimed for the current year.

Hearing

5. The hearing in this matter took place on 5 November 2007. The Applicant was represented by Mr Taylor of Wenlock & Taylor, the managing agents instructed on it behalf. The Respondents were represented by Mr Ogundimu and Miss Proctor, who appeared in person.

6. The Tribunal did not inspect the subject property. It dealt with this matter entirely on the basis of the submissions made by the parties and the documentary evidence before it.

7. Mr Taylor submitted that the cost of the buildings insurance premiums paid for the subject property from 2005/06 had remained at £1.78 per thousand and was very competitive. Indeed, other quotes obtained by him for another property managed by his firm had realised a figure of approximately £2 per thousand[1]. He had also tested the market by seeking alternative quotes for the subject property from other brokers. Mr Taylor provided a copy of a letter dated 1 November 2007 from Lockton, insurance brokers, who had obtained an insurance quote of £1,107.89 from the Royal & Sun Alliance, exclusive of IPT and terrorism premium. Those quotes had analysed at a rate of over £2 per thousand. In doing so, he submitted that he had tested the market and had accepted a competitive quote for the buildings insurance. Moreover, the sum insured was index linked and had increased through indexation but the cost per thousand had not increased in the last few years. The cost for the current service charge year was now£1.87 per thousand to insure a sum of £438,944.

8. Mr Ogundimu, for the Respondents, submitted that the cost of the buildings insurance for each of the relevant years was too high. He had requested the Applicant to provide alternative quotations and had not received a reply. Mr Ogundimu further submitted that his relative owned an identical property at 14 Station Road and he only paid a total premium of £462 for 2007/08, although he could not say which company the insurance had been with. It followed, he said, that the preceding years should have resulted in lower premiums. The Applicant had not obtained a competitive quote because only one broker had been approached to place the insurance.

Decision

9. The Tribunal found that the buildings insurance premiums demanded for the years 2005/06 to 2007/08 to be reasonable. There was no evidence from the Respondents that they were unreasonable. If the Respondents were going to advance the case that the buildings insurance premiums were unreasonable, they should have obtained evidence to that effect by, for example, obtaining their own alternative quotes. It was not for the Applicant to do so, as was

[1] See p.195 of the bundle

suggested by Mr Ogundimu. His mere assertion that an unnamed "relative", who owned 14 Station Road, had paid a premium of £462 for the current year was not evidence. Mr Ogundimu could not even tell the Tribunal which company had provided the insurance cover. If the Respondents were going to rely on this evidence, they should have called the relative as a witness to give evidence on their behalf. Furthermore, no reliance could be placed on the figure of £462 because it was not known what sum had been insured, what level of cover was provided, the claims history of the property and the level of the excess payable under the policy. In other words, there was no evidence upon which the Tribunal could make a finding that the premium of £462 was on a 'like for like' basis.

10. From the limited evidence provided by Mr Taylor, the Tribunal was satisfied, on balance, that the alternative quotations obtained from Lockton, the other insurance broker used by his firm, had resulted in a cost of over £2 per thousand for the same level of cover. Accordingly, the actual rates of £1.78 and £1.87 per thousand for the buildings insurance cover obtained by the Applicant for the service charge years in question appeared to be reasonable, especially having regard to the fact that the sum insured was subject to an upward indextion in each subsequent year. The Tribunal was also satisfied that the use of broker to place the buildings insurance had not prevented, as was suggested by Mr Ogundimu, alternative quotes being obtained. The use of a single broker is a matter of common practice whose task it is to obtain alternative quotes for a landlord who is obliged to insure a building under the terms of a lease.

11. It should also be made clear that, in insuring a building, a landlord is not obliged to accept the cheapest quote provided that the quote accepted falls within a reasonable range of premiums[2] and the Tribunal has found in those terms here. For the avoidance of doubt, the buildings insurance premiums allowed are the premiums set out at paragraph 4 above, net of the brokerage fee and the administration fee of £15 claimed in respect of the current year.

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[2] see ***Berrycroft Management Ltd v Sinclair Gardens Investments (Kensington) Ltd*** [1996] 29 HLR 444 CA

Section 20C & Fees

12. At the hearing the Respondents made an oral application under s.20C of the Act to prevent the Applicant from being able to recover any costs it had incurred in these proceedings through the service charge account. Section 20C of the Act provides the Tribunal with a discretion where it is *"just and equitable in the circumstances"* to do so.

13. Having regard to all the circumstances in this case, the Tribunal decided that it should make an order under s.20C that the Applicant should not be able to recover any of the costs it had incurred in these proceedings. The Tribunal's main reasons for making the order were:

    (a) there was a fundamental failure on the part of the Applicant to comply with any or all of the Tribunal's Directions without good reason.

    (b) the late delivery of the trial bundle to the Tribunal and the Respondents without good reason.

    (c) it was clear from the extensive *inter partes* correspondence that the Applicant or it's solicitors had not attempted to meaningfully deal with the Respondents enquiries from the outset. The Tribunal was supported in that view by the Applicant's breach and disregard for the Tribunal's Directions. Had the Applicant attempted to do so, it may well have resulted in either the application and/or the hearing being avoided.

14. In the circumstances, it would be both unjust and inequitable for the Applicant to be able to recover its costs, which may have been unnecessarily incurred. For the same reasons, the Tribunal also does not order the Respondents to reimburse the fees paid by the Applicant to the Tribunal.

Dated the 18 day of January 2008

CHAIRMAN.....J. Mohabir.....

Mr I Mohabir LLB (Hons)